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MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 14th July, 1984/Asadha 23, 1906 (Saka)

THE TERRORIST AFFECTED AREAS (SPECIAL COURTS) ORDINANCE, 1984

No. 9 OF 1984

Promulgated by the President in the Thirty-fifth Year of the Republic of India.

An Ordinance to provide for the speedy trial of certain offences in terrorist affected areas and for matters connected therewith.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution and of all other powers enabling him in that behalf, the President is pleased to promulgate the following Ordinance:—

1. (*1*) This Ordinance may be called the Terrorist Affected Areas (Special Courts) Ordinance, 1984. Short title, extent and commencement.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force at once.

Definitions.

2. (*1*) In this Ordinance, unless the context otherwise requires,—

(*a*) "Code" means the Code of Criminal Procedure, 1973; 2 of 1974.

(*b*) "High Court", in relation to a Special Court, means the High Court within the territorial limits of whose jurisdiction such Special Court is proposed to be, or is, established;

(*c*) "judicial zone" means a judicial zone constituted under sub-section (*1*) of section 3;

(*d*) "notification" means a notification published in the Official Gazette;

(*e*) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 9 and includes any person acting under the directions of the Public Prosecutor;

(*f*) "scheduled offence" means an offence specified in the Schedule being an offence committed in a terrorist affected area;

(*g*) "Special Court" means a Special Court or an Additional Special Court established under section 4;

(*h*) "terrorist" means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to—

(*i*) putting the public or any section of the public in fear; or

(*ii*) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities; or

(*iii*) coercing or overawing the Government established by law; or

(*iv*) endangering the sovereignty and integrity of India;

(*i*) "terrorist affected area" means an area declared as a terrorist affected area under section 3;

(*j*) words and expressions used but not defined in this Ordinance and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Ordinance to the Code or any provision thereof shall, in relation to an area in which the Code or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

Declaration of terrorist affected area.

3. (*1*) If the Central Government is of the opinion that offences of the nature specified in the Schedule are being committed in any area by terrorists on such a scale and in such a manner that it is expedient for the purpose of coping with the activities of such terrorists to have recourse to the provisions of this Ordinance, it may, by notification,—

(*a*) declare such area to be a terrorist affected area; and

(*b*) constitute such area into a single judicial zone or into as many judicial zones as it may deem fit.

(2) A notification issued under sub-section (1) in respect of an area shall specify the period during which the area shall, for the purposes of this Ordinance, be a terrorist affected area, and where the Central Government is of the opinion that terrorists had been committing in that area, from a date earlier than the date of issue of the notification, offences of the nature specified in the Schedule on such a scale and in such a manner that it is expedient to commence the period specified in the notification from such earlier date, the period specified in the notification may commence from that date:

Provided that—

(a) no period commencing from a date earlier than six months from the date of publication of the notification shall be specified therein; and

(b) so much of the period specified in such notification as is subsequent to the date of publication of the notification shall not, in the first instance, exceed six months, but the Central Government may, by notification, extend such period from time to time by any period not exceeding six months at any one time, if the Central Government, having regard to the activities of terrorists in such area, is of the opinion that it is expedient so to do.

Explanation.—For the avoidance of doubts, it is hereby declared that the period specified in a notification issued under this section may commence from a date earlier than the date of commencement of this Ordinance.

Establishment of Special Courts.

4. (1) For the purpose of providing for speedy trial of scheduled offences committed in a judicial zone, the Central Government may establish, by notification, a Special Court in relation to such judicial zone—

(a) within such judicial zone; or

(b) if the Central Government having regard to the exigencies of the situation prevailing in such judicial zone considers it expedient so to do, at any place outside such judicial zone but within the State in which such judicial zone is situated.

(2) Notwithstanding anything contained in sub-section (1), if, having regard to the exigencies of the situation prevailing in a State, the State Government is of the opinion that it is expedient to establish in relation to a judicial zone, or in relation to two or more judicial zones, in the State, an Additional Special Court outside the State, for the trial of such scheduled offences committed in the judicial zone or judicial zones, the trial whereof within the State—

(a) is not likely to be fair or impartial or completed with utmost dispatch; or

(b) is not likely to be feasible without occasioning a breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge or any of them; or

(c) is not otherwise in the interests of justice,

the State Government may request the Central Government to establish in relation to such judicial zone or judicial zones an Additional Special Court outside the State and thereupon the Central Government may, after taking into account the information furnished by the State Government and making such inquiry, if any, as it may deem fit, establish, by notification such Additional Special Court at such place outside the State as may be specified in the notification.

Composition and appointment of Judges of Special Courts.

5. (*1*) A Special Court shall be presided over by a Judge to be appointed by the Central Government with the concurrence of the Chief Justice of the High Court.

(*2*) The Central Government may also appoint, with the concurrence of the Chief Justice of the High Court, Additional Judges to exercise jurisdiction in a Special Court.

(*3*) A person shall not be qualified for appointment as a Judge or an Additional Judge of a Special Court unless he is immediately before such appointment a Sessions Judge or an Additional Sessions Judge in any State.

(*4*) For the removal of doubts, it is hereby provided that the attainment by a person, appointed as a Judge or an Additional Judge of a Special Court, of age of superannuation under the rules applicable to him in the Service to which he belongs, shall not affect his continuance as such Judge or Additional Judge.

(*5*) Where any Additional Judge or Additional Judges is, or are, appointed in a Special Court, the Judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among himself and the Additional Judge or Additional Judges and also for the disposal of urgent business in the event of his absence or the absence of any Additional Judge

Place of sitting.

6. A Special Court may, if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than the ordinary place of its sitting in the State in which it is established:

Provided that if the Public Prosecutor certifies to the Special Court that it is in his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interests of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Special Court may, after hearing the accused, make an order to that effect unless, for reasons to be recorded in writing, the Special Court thinks fit to make any other order.

Jurisdiction of Special Court.

7 (*1*) Notwithstanding anything contained in the Code or in any other law, a scheduled offence committed in a judicial zone in a State at any time during the period during which such judicial zone is, or is part of, a terrorist affected area shall be triable, whether during or after the expiry of such period, only by the Special Court established for such judicial zone in the State:

Provided that where the period specified under sub-section (*2*) of section 3 as the period during which an area declared by notification under sub-section (*1*) of that section to be a terrorist affected area commences from a date earlier than the date on which such notification is issued, then—

(*a*) nothing in the foregoing provisions of this sub-section shall apply to a scheduled offence committed in such area in which the whole of the evidence for the prosecution has been taken before the date of issue of such notification; and

(*b*) all other cases involving scheduled offences committed in such area and pending before any court immediately before the date of issue of such notification shall stand transferred to the Special Court having jurisdiction under this section and the Special Court to which such proceedings stand transferred shall proceed with such cases from the stage at which they were pending at that time.

(2) Notwithstanding anything contained in sub-section (1), if in respect of a case involving a scheduled offence committed in any judicial zone in a State, the Central Government, having regard to the provisions of sub-section (2) of section 4 and the facts and circumstances of the case and all other relevant factors, is of the opinion that it is expedient that such offence should be tried by the Additional Special Court established in relation to such judicial zone outside the State, the Central Government may make a declaration to that effect:

Provided that no such declaration shall be made unless the State Government has forwarded to the Central Government a report in writing containing a request for making of such declaration.

Explanation.—Where an Additional Special Court is established in relation to two or more judicial zones, such Additional Special Court shall be deemed, for the purposes of this sub-section, to have been established in relation to each of such judicial zones.

(3) A declaration made under sub-section (2) shall not be called in question in any court.

(4) Where any declaration is made in respect of any offence committed in a judicial zone in a State, any prosecution in respect of such offence shall be instituted only in the Additional Special Court established in relation to such judicial zone outside the State, and if any prosecution in respect of such offence is pending immediately before such declaration in any other court, the same shall stand transferred to such Additional Special Court and such Additional Special Court shall proceed with such case from the stage at which it was pending at that time.

Power of Special Courts with respect to other offences.

8. (1) When trying any scheduled offence, a Special Court may also try any offence other than the scheduled offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with the scheduled offence.

(2) If, in the course of any trial under the Ordinance, it is found that the accused person has committed any offence, the Special Court may, whether such offence is or is not a scheduled offence, convict such person of such offence and pass any sentence authorised by law for the punishment thereof.

Public Prosecutors.

9. (1) For every Special Court, the Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (*u*) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Procedure and powers of Special Courts.

10. (*1*) A Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(*2*) Where a scheduled offence is punishable with imprisonment for a term not exceeding three years or with fine or with both, a Special Court may, notwithstanding anything contained in sub-section (*1*) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(*3*) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(*4*) Subject to the other provisions of this Ordinance, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(5) Subject to the other provisions of this Ordinance, every case before an Additional Special Court shall be dealt with as if such case had been transferred under section 406 of the Code to such Additional Special Court.

Power of Supreme Court to transfer case.

11. Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case be transferred from one Special Court to another Special Court.

Protection of witnesses.

12. (*1*) Notwithstanding anything contained in the Code, all proceedings before a Special Court shall be conducted *in camera*:

Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open court.

(*2*) A Special Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.

(3) In particular and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include—

(a) the holding of the proceedings at a protected place;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed.

(4) Any person who contravenes any direction issued under sub-section (2) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Power to transfer cases to regular courts.

13. Where after taking cognizance of any offence, a Special Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it has taken cognizance of the offence.

Appeal.

14. (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Modified application of certain provisions of the Code.

15. (1) Notwithstanding anything contained in the Code or any other law, every scheduled offence shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving a scheduled offence subject to the modifications that—

(a) the reference in sub-section (1) thereof to "Judicial Magistrate" shall be construed as a reference to "Judicial Magistrate or Executive Magistrate";

(b) the references in sub-section (2) thereof to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "one year" and "one year", respectively; and

(c) sub-section (2A) thereof shall be deemed to have been omitted.

(3) Sections 366 to 371 and section 392 of the Code shall apply in relation to a case involving a scheduled offence subject to the modifications that the references to "Court of Session" and "High Court", wherever occurring therein, shall be construed as references to "Special Court" and "Supreme Court", respectively.

(*4*) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed a scheduled offence in a terrorist affected area.

(*5*) Notwithstanding anything contained in the Code, no person accused of a scheduled offence shall, if in custody, be released on bail or on his own bond unless—

(*a*) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(*b*) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(*6*) The limitations on granting of bail specified in sub-section (*5*) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

Overriding effect of Ordinance.

16. (*1*) The provisions of this Ordinance shall have effect notwithstanding anything contained in the Code or any other law, but save as expressly provided in this Ordinance, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Ordinance, apply to the proceedings before a Special Court; and for the purpose of the said provisions of the Code, the Special Court shall be deemed to be a Court of Session.

(*2*) In particular and without prejudice to the generality of the provisions contained in sub-section (*1*), the provisions of sections 326 and 475 of the Code shall, as far as may be, apply to the proceedings before a Special Court, and for this purpose any reference in those provisions to a Magistrate shall be construed as a reference to the Special Court.

Delegation.

17. The Central Government may, by notification, delegate, subject to such conditions as may be specified, all or any of the powers exercisable by it under this Ordinance [except the power under sub-section (*2*) of section 4 and the power under sub-section (*2*) of section 7] to the State Government.

Power to make rules.

18. The Supreme Court may, by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Ordinance.

Saving.

19. (*1*) Nothing in this Ordinance shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or any other armed forces of the Union.

(*2*) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (*1*), a Special Court shall be deemed to be a Court of ordinary criminal justice.

Amendment of Act 1 of 1872.

20. In the Indian Evidence Act, 1872, after section 111, the following section shall be inserted, namely:—

Presumption as to certain offences.

"111A. (*1*) Where a person is accused of having committed any offence specified in sub-section (*2*), in—

(*a*) any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(*b*) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

(*2*) The offences referred to in sub-section (*1*) are the following, namely:—

(*a*) an offence under section 121, section 121A, section 122 or
45 of 1860 section 123 of the Indian Penal Code;

(*b*) criminal conspiracy or attempt to commit, or abetment of, an offence under section 122 or section 123 of the Indian Penal Code.".

THE SCHEDULE

[*See* section 2 (*f*)]

PART I—INDIAN PENAL CODE

45 of 1860 1. Offences under the following provisions of the Indian Penal Code, 1860:—

(*a*) sections 121, 121A, 122, 123, 124 and 124A;

(*b*) sections 128, 129 and 130;

(*c*) sections 131, 132, 133, 134, 135, 136, 138 and 140;

sections 153A and 153B;

sections 189 and 190;

sections 212, 216, 216A, 224, 225 and 225B;

sections 295 and 295A;

sections 302, 304 and 307;

(*d*) sections 308 and 326;

(*e*) sections 332, 333, 342, 343, 344, 346, 347, 353, 363, 364, 365 and 367;

sections 392, 393, 394, 395, 396, 397, 398, 399 and 436;

sections 505, 506 and 507.

PART II—THE EXPLOSIVES ACT, 1884

4 of 1884 2. Offences under the following provisions of the Explosives Act, 1884:—

section 9B.

PART III—THE INDIAN TELEGRAPH ACT, 1885

3. Offences under the following provisions of the Indian Telegraph Act,
13 of 1885. 1885:—

sections 20 and 25.

PART IV—THE INDIAN RAILWAYS ACT, 1890

4. Offences under the following provisions of the Indian Railways Act, 1890:— 9 of 1890

sections 126, 126A, 127 and 128.

PART V—THE EXPLOSIVE SUBSTANCES ACT, 1908

5. Offences under the following provisions of the Explosive Substances Act, 1908:— 6 of 1908

sections 3, 4, 5 and 6.

PART VI—THE ARMS ACT, 1959

6. Offences under the following provisions of the Arms Act, 1959:— 54 of 1959.

sections 25(*1*) excluding clause (*b*), 25(*1A*), 25(*1B*) excluding clauses (*d*), (*e*), (*i*), 26, 27, 28 and 29.

PART VII—THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

7. Offences under the following provisions of the Unlawful Activities (Prevention) Act, 1967:— 37 of 1967.

sections 10, 11, 12 and 13.

PART VIII—THE ANTI-HIJACKING ACT, 1982

8. Offences under the following provisions of the Anti-Hijacking Act, 1982:— 65 of 1982

sections 4 and 5.

PART IX—THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF CIVIL AVIATION ACT, 1982.

9. Offences under the following provisions of the Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982:— 66 of 1982

sections 3 and 4

PART X—THE PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984

10. Offences under the following provisions of the Prevention of Damage to Public Property Act, 1984:— 3 of 1984

sections 3 and 4

Note 1.—An offence specified in item 1(*b*) of Part I of this Schedule (that is to say, an offence under section 128, 129 or 130 of the Indian Penal Code) shall be deemed to be a scheduled offence only where such offence is committed in relation to a prisoner accused, charged or convicted of a scheduled offence.

Note 2.—An offence specified in item 1(*d*) of Part I of this Schedule (that is to say, an offence under section 308 or section 326 of the Indian Penal Code) shall be deemed to be a scheduled offence only where such offence is committed with a firearm.

Note 3.—The offence of criminal conspiracy or attempt to commit, or abetment of, an offence specified in this Schedule shall be deemed to be a scheduled offence.

Note 4.—The commission of an offence specified in this Schedule by any member of an unlawful assembly shall be deemed to be the commission of that scheduled offence by every other member of the unlawful assembly.

ZAIL SINGH,
President.

R. V. S. PERI SASTRI,
Secy. to the Govt. of India.

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